

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LANCE THOMPSON and DARA SINGH,

Plaintiffs,

v.

SAFETY-KLEEN SYSTEMS, INC., *et al.*,

Defendants.

No. C06-1270RSL

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION FOR  
SANCTIONS AGAINST PLAINTIFF  
SINGH

This matter comes before the Court on "Defendants' Motion for Sanctions Against Plaintiff Singh" (Dkt. #44). In their motion, defendants request dismissal of plaintiff Singh's action with prejudice and an award of attorney's fees and costs because of plaintiff's failure to attend his deposition on June 7, 2007 and because plaintiff allegedly failed to fully and timely respond to defendants' discovery requests. Plaintiff opposes the motion for sanctions contending that he failed to attend his deposition due to a medical condition and served his complete discovery responses to defendants on-time. See Dkt. #72. Defendants did not file a reply in support of their motion.

Having reviewed the memoranda, declarations, and exhibits submitted by the parties, and the remainder of the record, the Court finds as follows:

1. On April 20, 2007, defendants' counsel noticed plaintiff's deposition for June 5, 2007. See Dkt. #45 (Glassman Decl.), Ex. A. By agreement, plaintiff's deposition was

ORDER GRANTING IN PART AND  
DENYING IN DEFENDANTS' MOTION  
FOR SANCTIONS

1 rescheduled for June 7, 2007, and counsel for defendants provided an amended notice of  
2 deposition. Id. at Exs. B and C. On July 7, 2007, plaintiff failed to appear for his deposition.  
3 At the time scheduled for plaintiff's deposition, counsel for plaintiff stated that he received a  
4 phone call from plaintiff on the evening of July 6, 2007 confirming plaintiff's attendance at his  
5 deposition on July 7, 2007. Id. at Ex. D. Counsel for plaintiff attempted to contact plaintiff on  
6 July 7, 2007, but was unable to reach him. Id. Plaintiff states that on the evening of July 6,  
7 2007 he did confirm with his attorney that he would attend the July 7, 2007 deposition, but  
8 "[b]ecause of intense anxiety the morning of June 7, I was unable to attend." See Dkt. #72  
9 (Singh Decl.) at ¶4.

10 2. Federal Rules of Civil Procedure "Rule 37(d) allows the district court to impose  
11 sanctions, including payment of expenses, on a party who fails to appear for his own deposition  
12 after receiving proper notice." Lew v. Kona Hosp., 754 F.2d 1420, 1426 (9th Cir. 1985). Under  
13 Rule 37(d), "If a party . . . fails (1) to appear before the officer who is to take the deposition,  
14 after being served with a proper notice . . . [i]n lieu of any order or in addition thereto, the court  
15 shall require the party failing to act or the attorney advising that party or both to pay the  
16 reasonable expenses, including attorney's fees, caused by the failure unless the court finds that  
17 the failure was substantially justified or that other circumstances make an award of expenses  
18 unjust." As the Advisory Committee Notes to Rule 37(d) provide, the failure to appear need not  
19 be "willful," and "even a negligent failure should come with Rule 37(d)." See Lew, 754 F.2d at  
20 1126.

21 3. Here, the Court finds that plaintiff's representation that he had "intense anxiety" the  
22 morning of June 7, 2007, without more, does not show substantial justification for his failure to  
23 attend his deposition. Plaintiff's deposition had already been rescheduled and plaintiff had  
24 proposed June 7, 2007 as the date for his deposition. See Dkt. 43, Ex. B. Accordingly,  
25 defendants' reasonable expenses related to plaintiff's failure to appear for his deposition and the

1 filing of this motion for sanctions shall be awarded against plaintiff Singh. The Court, however,  
2 declines to impose sanctions against plaintiff's counsel or the harsh sanction of dismissal in this  
3 case. See Oliva v. Sullivan, 958 F.2d 272, 274 (9th Cir. 1992).

4 4. On May 22, 2007, the Court ordered plaintiff to provide, among other things, a  
5 substantive response to defendant Safety-Kleen Systems, Inc.'s Interrogatory No. 11 and items  
6 requested by defendant's Request for Production No. 9 no later than 10 days from the date of the  
7 Order. See Dkt. #31. Plaintiff produced responses as required by the Court's May 22, 2007  
8 Order to defendants on June 6, 2007. See Dkt. #45 at Ex. E. The Court finds that plaintiff's  
9 response was timely under the Fed. R. Civ. P. 6 and that plaintiff adequately complied with the  
10 discovery requests and the Court's Order. See Dkt. #72 (Breskin Decl.) at Exs. 1, 2.  
11 Accordingly, the Court denies defendants' request to impose sanctions based on the alleged  
12 failure to comply with the Court's May 22, 2007 Order.

13 For all of the foregoing reasons, defendants' motion for sanctions is GRANTED IN  
14 PART and DENIED IN PART. Defendants shall submit, within 10 days from the date of this  
15 Order, a statement of their reasonable expenses associated with plaintiff Singh's failure to  
16 appear for his deposition and the expenses associated with bringing this motion. Plaintiff Singh  
17 may file and serve an opposition to the reasonableness of the expenses within 7 days from the  
18 date of defendants' application for expenses. No other submissions will be considered.

19  
20 DATED this 28th day of August, 2007.

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23 Robert S. Lasnik  
24 United States District Judge

25  
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FOR SANCTIONS